WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 3911

IN THE MATTER OF: Served March 25, 1992

Application of RUCHMAN AND ASSOCIATES, INC., Trading as RAI, INC., for a Certificate of Authority -- Irregular Route Operations) Case No. AP-91-32

This matter came on for hearing on January 8, 1992, before Presiding Administrative Law Judge Robert Bamford on an application for reconsideration of Order No. 3844.[1] In that order, we conditionally granted the application of Ruchman and Associates, Inc., trading as RAI, Inc. (RAI), for a Certificate of Authority over the protest of DD Enterprises, Inc., trading as Beltway Transportation Service (Beltway). Beltway applied for reconsideration on the basis of post-order events. We granted that application and scheduled a hearing to receive evidence of those events. We now affirm Order No. 3844.

I. DISCUSSION

The factual issues set for hearing were whether RAI had transported passengers for hire in the Metropolitan District: (1) after receiving a conditional grant of authority but before receiving a Certificate of Authority, (2) without proper evidence of insurance on file, and (3) before the applicable tariff was on file and effective.[2] The legal issue before the Commission is whether our finding of compliance fitness in Order No. 3844 requires revision if we find RAI committed any of the above infractions.[3]

A. Evidence of RAI's Violation of the Compact and Commission Regulations

We conditionally granted a Certificate of Authority to RAI on November 13, 1991, contingent upon, inter alia, RAI's filing a certificate of insurance.[4] On November 15, 1991, RAI was awarded a contract with the USDA Forest Service (Forest Service).[5] The contract

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[1] In re Application of Ruchman & Assocs., No. AP-91-32, Order No. 3844 (Nov. 13, 1991).

[2] See In re Application of Ruchman & Assocs., No. AP-91-32, Order No. 3868 (Dec. 19, 1991) (noting potential violations of Compact, Title II, Article XI, §§ 6, 7, & 14).

[3] Id.

[4] Order No. 3844.

[5] RAI's Contract Tariff No. CT-2 (incorporated herein by reference; see Commission Rule No. 22-05).

required RAI to begin operating a shuttle on November 20, 1991, to and from the Forest Service location at 14th Street and Independence Avenue, S.W., Washington, DC.[6] RAI did not receive its Certificate of Authority, however, until November 22, 1991, the day it filed an acceptable certificate of insurance.[7] The tariff for that service was not filed in acceptable form until November 25, 1991, and was not effective until December 2, 1991.[8]

At the hearing, Jay F. Davis, Beltway's president, testified that on November 20, 1991, he observed a vehicle with RAI lettering on its side in the vicinity of 14th Street and Independence Avenue, S.W., Washington, DC. Mr. Davis witnessed a passenger disembark from the RAI vehicle. Mr. Davis then approached the RAI vehicle on foot and observed through the windshield a sign indicating it was a Forest Service shuttle. The driver confirmed he was operating a Forest Service shuttle and identified himself as David VanMetre, an employee of RAI. Mr. Davis identified Mr. VanMetre in the hearing room as the driver of the shuttle that day.

Neal Wenger, vice president of Beltway, testified that he was with Mr. Davis on November 20 and likewise observed a vehicle with RAI lettering on its side. Mr. Wenger observed passengers exit the RAI vehicle and enter what appeared to him to be the Forest Service's building. Mr. Wenger saw the RAI driver leave the vehicle and enter the same building after speaking with Mr. Davis.

Mr. VanMetre, vice president of RAI, admitted that RAI operated the Forest Service shuttle on November 20. Mr. VanMetre testified, however, that RAI did not itself operate the shuttle from November 21 through December 1. His testimony and Exhibit 4 demonstrate that Bethany Limousine Service, which holds Certificate of Authority No. 185,[9] performed this service during that period under subcontract to RAI.

We find that RAI, itself, operated the Forest Service shuttle on November 20, 1991, with neither a Certificate of Authority nor proper evidence of insurance on file nor an effective tariff on file, in violation of the Compact, Title II, Article XI, §§ 6, 7 and 14 and Commission Regulation Nos. 55 and 58.

B. Assessment of Civil Forfeiture

The Compact, Title II, Article XIII, § 6(f) provides that a person who knowingly and willfully violates a provision of the Compact or a regulation issued under it shall be subject to a civil forfeiture of not more than $1,000 for the first violation and not more than

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[6] Id.

[7] Letter of Nov. 22, 1991, from WMATC to RAI, enclosing Certificate of Authority No. 191.

[8] RAI's Contract Tariff No. CT-2.

[9] Commission records indicate that Certificate of Authority No. 185 was issued to Bethany Travel Agency, Inc., trading as Bethany Travel and Limousine Service, on August 6, 1991.

$5,000 for any subsequent violation and that each day of the violation constitutes a separate violation. The word willfully, as used here, does not mean with evil purpose or criminal intent; rather, "it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the [Compact] or is plainly indifferent to its requirements."[10] Previous convictions or violations are very probative of willful disregard.[11]

This is the second time we have found RAI in violation of the Compact and our regulations for transporting passengers for hire in the Metropolitan District without a Certificate of Authority. The first time was on November 4, 1991, when we found, on the basis of RAI's own admissions,[12] that RAI had willfully transported passengers between points in the Metropolitan District for 5 days in October pursuant to a USDA/APHIS contract.[13] We found that apparently RAI was torn between defaulting on the USDA/APHIS contract and operating in violation of the Compact and had opted to violate the Compact.[14] Once challenged, RAI obtained permission from USDA/APHIS to subcontract with Bethany Limousine Service to operate the USDA/APHIS shuttle until RAI received its Certificate of Authority.[15]

The circumstances here are remarkably similar. RAI was awarded a contract obligating it to operate the Forest Service shuttle at a time when it did not hold a Certificate of Authority. The RAI employee operating the Forest Service shuttle on November 20, Mr. VanMetre, knew his employer needed a Certificate of Authority to operate the shuttle[16] and also knew as of November 20 his employer had not yet received it.[17] Torn between violating the contract[18] and violating the Compact and our regulations, Mr. VanMetre opted for the latter. Bethany Limousine Service was called in to subcontract but did not begin operating until November 21.

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[10] United States v. Illinois Central R.R. 303 U.S. 239, 243, 58 S. Ct. 533, 535 (1938).

[11] United States v. Paramount Moving & Storage Co., 479 F. Supp. 959, 965 (M.D. Fla. 1979); United States v. T.I.M.E. - D.C., 381 F. Supp. 730, 741 (W.D. Va. 1974).

[12] Exhibit 3.

[13] In re Application of Ruchman & Assocs., No. AP-91-31, Order No. 3839 (Nov. 4, 1991).

[14] Id. at 2-3.

[15] Exhibit 3.

[16] See Exhibits 2 & 3.

[17] Mr. VanMetre's phone calls to the Forest Service contracting officer on November 15, 18 and 19, to secure permission to let a subcontract conclusively establish his awareness that RAI lacked authority to commence operations on November 20, 1991. See tr. at 29.

[18] Tr. at 28.

On the basis of the evidence in the record and in light of our findings in Order No. 3839, we find that RAI's violation of the Compact and our regulations on November 20, 1991, was both knowing and willful. We therefore assess a civil forfeiture against RAI in the amount of $500.

C. The Commission's Finding of Compliance Fitness in Order No. 3844

We now must consider the impact of our findings here on our finding of compliance fitness in Order No. 3844.[19] We start with the observation that "[d]etermination of compliance fitness is prospective in nature."[20] Where, as here, we have findings of violations, we must examine the nature and extent of the violations, their persistency and flagrancy, any mitigating factors, and any sincere efforts to correct previous errors.[21]

Although this is the second time we have found RAI in knowing and willful violation of the Compact for operating without a Certificate of Authority, this time RAI operated unlawfully for one day, not five as before. Moreover, this time RAI sought to subcontract the service before it was caught, not after. The person responsible for both incidents has since been reassigned. RAI's president has assumed personal responsibility. Outside counsel will review RAI's current and future operations for compliance. RAI has instituted a self-imposed moratorium on government transportation contract bidding pending resolution of this proceeding.

II. CONCLUSION

Although we find that RAI knowingly and willfully violated the Compact and our regulations by operating without a Certificate of Authority on November 20, 1991, we find that the presence of mitigating circumstances and RAI's sincere efforts to correct past mistakes and initiation of compliance review procedures establish its prospective compliance fitness. We, therefore, affirm Order No. 3844.

The Commission acknowledges protestant Beltway's role in these proceedings, which we understand to be motivated by a desire for fairness. Beltway competes with RAI and many others in bidding for government contracts. The bidding process is fairer when all of the participants are bound by the same rules and requirements.

THEREFORE, IT IS ORDERED:

1. That Order No. 3844 is hereby affirmed.

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[19] Compact, Title II, Art. XIII, § 4(d); Commission Regulation No. 27-04.

[20] In re Application of Miju Express, No. AP-91-36, Order No. 3865 at 3 (Dec. 19, 1991).

[21] Wilkett v. ICC, 710 F.2d 861, 864 (D.C. Cir. 1983).

2. That Ruchman and Associates, Inc., trading as RAI, Inc., is hereby assessed a civil forfeiture in the amount of $500 and directed to deliver that amount to the Commission within 30 days by money order, certified check, or cashier's check payable to the Washington Metropolitan Area Transit Commission.

3. That the costs of this proceeding in the amount of $492 are hereby assessed against Ruchman and Associates, Inc., trading as RAI, Inc., pursuant to the Compact, Title II, Article XIV, Section 1(a), and RAI is directed to deliver that amount to the Commission within 30 days by money order, certified check, or cashier's check, payable to the Washington Metropolitan Area Transit Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS DAVENPORT, SCHIFTER, AND SHANNON:

William H. McGilvery
Executive Director